

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
JAMES CODIGA,

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 78-219

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

This matter, the appeal of a \$250 civil penalty for odor allegedly in violation of respondent's Section 9.11(a) of Regulation I, came on for hearing before the Pollution Control Hearings Board, Dave J. Mooney, Chairman, and Chris Smith, Member, convened at Seattle, Washington, on November 1, 1978. Hearing examiner William A. Harrison presided. Respondent elected a formal hearing pursuant to RCW 43.21B.230.

Appellant appeared and represented himself. Respondent appeared by its attorney, Keith D. McGoffin. Reporter Marilyn Hoban recorded the proceedings.

1 Witnesses were sworn and testified. Exhibits were examined. From
2 testimony heard and exhibits examined, the Pollution Control Hearings
3 Board makes these

4 FINDINGS OF FACT

5 I

6 Respondent, pursuant to RCW 43.21B.260, has filed with this Board
7 a certified copy of its Regulation I containing respondent's regulations
8 and amendments thereto, of which official notice is taken.

9 II

10 The appellant, James Codiga, operates a farm near Seattle at
11 12522 - 51st Place South. Although he sold the land to King County for
12 use as a park at an indefinite, future time, he continues to operate the
13 farm under lease. The farm is in an agricultural area.

14 The appellant holds a contract by which he removes mash from
15 a brewery and stores it in two pits (20 feet by 80 feet by 6 feet deep and
16 20 feet by 40 feet by 6 feet deep) on the farm. Part of this brewery
17 mash is used to feed appellant's stock (60-70 cows and 20 pigs) and part is
18 held for sale to others.

19 The appellant also holds a contract to deliver fish to a rendering
20 plant. The appellant trucks these fish in an open trailer. At times
21 pertinent to this appeal, appellant would deliver the fish, then park the
22 trailer at his farm.

23 III

24 On August 18, 1978, respondent received two complaints from
25 persons residing near appellant's farm. The complainants were
26 confronted with a "rotten" and "nauseating" odor which was the combined

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1 odor of fish from the trailer which appellant parked on his farm, and of
2 brewery mash which appellant stored on his farm. The odor, during
3 the previous night, was sufficient to awaken one of the complainants
4 inside her home and the same odor had occurred with similar intensity,
5 on and off, throughout the summer. It caused complainants to be sick at
6 their stomachs, constantly, and necessitated closing the windows of their
7 homes.

8 Respondent's inspector answered these complaints by visiting the
9 appellant's farm on the same day, August 18, 1978. The inspector
10 detected odor both from the stored brewery mash and the fish trailer
11 which although substantially empty, contained 5-6 dead fish and was
12 unwashed. The means which the inspector used to describe the intensity
of the odor is a scale of 0-4 as follows:

14	<u>Rating</u>	<u>Description</u>
15	0	No detectable odor.
16	1	Odor barely detectable.
17	2	Odor distinct and definite, any unpleasant characteristics 18 recognizable.
19	3	Odor strong enough to cause attempts at avoidance.
20	4	Odor overpowering, intolerable for any appreciable time.

21 The inspector rated the odor from the brewery mash as Number 2 and the
22 odor from the fish trailer as Number 3, at the complainants' homes
23 400 feet away.

24 The appellant received a Notice and Order of Civil Penalty (No. 3980)
25 alleging violation of respondent's Section 9.11(a) and assessing a civil
penalty of \$250. From these, appellant appeals.

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER 3

1 IV

2 The appellant recognizes the odor problem caused by parking the
3 fish trailer at his farm, and has discontinued that practice. He is
4 keeping the brewery mash piles covered with hay, to suppress odors.

5 The appellant has no prior record of violating respondent's
6 regulations.

7 V

8 Any Conclusion of Law which should be deemed a Finding of Fact is
9 hereby adopted as such.

10 From these Findings, the Pollution Control Hearings Board comes to
11 these

12 CONCLUSIONS OF LAW

13 I

14 Respondent alleges that the odor from appellant's farm violated
15 Section 9.11(a) of respondent's Regulation I which states:

16 It shall be unlawful for any person to cause or permit
17 the emission of an air contaminant or water vapor, including
18 an air contaminant whose emission is not otherwise prohibited
19 by this Regulation, if the air contaminant or water vapor
causes detriment to the health, safety or welfare of any
person, or causes damage to property or business.

20 Section 1.07 defines "air contaminant" to include "odorous
21 substance." Section 3.29 allows assessment of a civil penalty of up to
22 \$250 per day for each violation of a regulation of the respondent.

23 II

24 We conclude that the combined odor of fish and brewery mash emanating
25 from appellant's farm on August 18, 1978, violated respondent's Section
26 9.11(a). Such odor constituted an "unreasonable interference with

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1 enjoyment of life and property" and therefore "caused detriment to . . .
2 the welfare" of the complaining nearby residents. Boulevard Excavating v.
3 Puget Sound Air Pollution Control Agency, PCHB No. 77-69 (1977) and Cudahy
4 Company v. Puget Sound Air Pollution Control Agency, PCHB No. 77-98, et al.
5 (1977).

6 Because appellant has discontinued parking the fish trailer on
7 his farm and because he has no prior record of violating respondent's
8 regulations, the civil penalty should be suspended on condition that
9 appellant commit no further odor violations of respondent's regulations
10 for a period of six months.

11 Since this matter involves the combined odor of the fish and
12 brewery mash, the uncombined odor of the brewery mash is not before
us at this time. We note in passing, however, that should this odor
14 prove troublesome in the future, other farmers have apparently reduced
15 the odor by covering their brewery mash with material such as plastic
16 sheets (Visqueen).

17 III

18 Any Finding of Fact which should be deemed a Conclusion of Law
19 is hereby adopted as such.

20 From these Conclusions, the Board enters this

21 ORDER

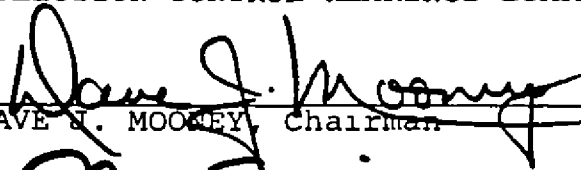
22 The violation and \$250 civil penalty (No. 3980) are affirmed,
23 provided however, that the entire penalty is suspended on condition
24 that appellant shall commit no odor violation of respondent's regulations
25 for a period of six months from the date of appellant's receipt of this

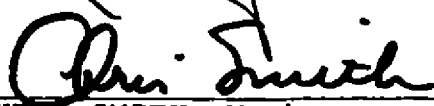
FINAL FINDINGS OF FACT,
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1 Order.

2 DONE at Lacey, Washington, this 29th day of November, 1978.

3 POLLUTION CONTROL HEARINGS BOARD

4 
5 DAVE S. MOONEY, Chairman

6 
7 CHRIS SMITH, Member

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